

## LABOUR DEPARTMENT

The 22nd December, 1994.

No. 14/13/87-6Lab./1014.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s E. C. E. Co. (Transformer Division), Sonapat *versus* Manoj Kumar.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK:

Reference No. 1 of 1994

*between*  
SHRI MANOJ KUMAR, S/O SHRI ADALAT SINGH, C/O SIRINAGAR, DELHI ROAD,  
NEAR E. C. E. CO., SONEPAT

.. Workman

*versus*

THE MANAGEMENT OF M/S. E. C. E. CO. (TRANSFORMER DIVISION), SONEPAT.

*Present :*

Shri V. P. Singh, authorised representative for the workman.

Shri S. Kaushal, authorised representative for the management.

## AWARD

In exercise of powers conferred by sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute between the parties named above, to this Court for adjudication.—*vide* Labour Department Endorsement No. OV/276-81/ dated 5th January, 1994:-

Whether the termination of services of Shri Manoj Kumar is justified and in order? If not, to what relief he is entitled?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was appointed by the respondent with effect from 10th April, 1987 as a winding-man in the Transformer Division of the factory which the respondent has admitted in the failure report dated 29th November, 1987 submitted by the Conciliation Officer, Labour Department, Sonapat to the State Government of Haryana, through the Deputy Labour Commissioner, Sonapat in case of the demand notice of the claimant/workman dated 30th September, 1991 which was served upon the respondent after terminating the services of the applicant by the respondent with effect from 7th September, 1991 without assigning any reason. The claimant/workman lodged a complaint to the Labour Inspector, Sonapat on 13th September, 1991. The respondent did not appear and the Labour Inspector advised the claimant/workman to raise industrial dispute. Since no conciliation was arrived at therefore, the failure report was submitted by the Conciliation Officer, Sonapat on 29th November, 1991 stating therein that the claimant workman had been working with the respondent for four and half years at salary of Rs. 870 per month and his services were terminated with effect from 7th September, 1991 in an illegal manner. The management has also admitted that the workman was appointed on 10th April, 1987 as a learner and his services were terminated on 30th June, 1991 not on 7th September, 1991 but his name was kept in the waiting list for appointing him in future, and therefore, the termination of services of the claimant as mentioned by the applicant on 7th September, 1991 does not arise and hence the demand notice of the claimant/workman is likely to be dismissed. The claimant/workman filed C. W. P. No. 8966 of 1993 in the High Court of Punjab and Haryana and Hon'ble High Court directed the State Government to dispose of the demand notice within 15 days from the date of order dated 28th July, 1993. The workman was also allotted E.S.I. Card No. 5254232 by the E.S.I. Department. Hence this claim statement was filed that he be reinstated with continuity of service and with full back wages alongwith all other service benefits with heavy costs.

3. The written statement was filed by the respondent is that the applicant was working as learner for the period upto 30th June, 1991. He was not work till such time and as such the reference by the government is not competent on this ground alone. The applicant was not in employment as on 4th September, 1991 and hence there was no cause of action over accrued to him for the same. All such facts written in claim statement which took before Labour Officer in the demand notice. Moreover, no intimation was received by the answering respondent from the Labour Inspector. The applicant has not supplied

the copy which he has enclosed to the answering respondent. Hence, it is neither possible nor admissible to submit any comments thereon. The Company has certified Standing Orders which provides for learner-ship arrangements. The deduction of E. S. I. as per provisions of the Act and is mandatory requirement but will not convert the applicant as a workman. The applicant was learning in various trades and he was allowed further training on his own request. He completed his training as on 30th June, 1991. He submitted an application on 30th July, 1991 for being absorbed. Since there was no vacancy, the applicant was informed accordingly. The applicant was being paid at the rate of Rs. 870 per month which was the minimum wages of an unskilled worker. This amount was paid in terms of the judgement of Supreme Court wherein it was stated that management can keep learners but they will have to pay the minimum wages. The applicant never worked in the month of July, August and September, 1991. The category of learners is duly incorporated in the Standing Orders. The Standing Orders are valid and operative. For a learner the provisions of Section 25-N of the I. D. Act are not applicable. There was no termination at all but applicant after completion of learnership left on 30th June, 1991. Hence the claim statement is liable to be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

(1) As per terms of reference ?

(2) Relief.

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 :

6. The workman has examined himself as WW-1 and also examined S/Shri Anil Kumar, son of Shri Desh Raj as WW-2, Satinder Kumar as WW-3 and Ram Dhan, son of Shri Rajmal as WW-4 and closed his evidence. The management has examined Shri M. P. Yadav, Time Officer of the respondent as MW-1 and proved Standing Orders and evidence thereafter closed. The learned authorised representative for the workman has filed the written arguments.

7. The written arguments of the workman is that the claimant after wrongful termination with effect from 7th September, 1991 raised the dispute by serving complaint to the Labour Inspector, Sonapat and thereafter raised the demand notice dated 30th September, 1991. The copy of said demand notice was sent to the management as well as by the Labour Officer-cum-Conciliation Officer, Sonapat.

8. The contention raised by the petitioner is that said reference in itself is proof that service of the claimant were wrongfully terminated because the claimant workman without interruption of his service worked with the respondent from 10th April, 1987 to the September, 1991. In proof of the case the workman appeared and examined WW-2 to WW-5 of witnesses which the workmen produced are the worker of respondent who are still working. Under planned and unfair labour practice the respondent did not give the wages for the month of July, August and upto 7th September, 1991. The respondent was already processing a civil writ petition in the Hon'ble High Court of Punjab, and Haryana in the matter of learnership/Apprentice. Therefore with this bad motive the wages of the claimant was not paid to the claimant from July onwards and moreover the blank signed papers obtained in advance from the claimant workman at the time of his appointment those signatures have been misused by the respondent by framing letters of different nature and shown to have been written by the claimant. Some of the letters which have been produced in form of exhibits are typed later on to serve the purpose of the respondent so that the claimant may not be able to claim his reinstatement in service to claim for legal dues. The Government had not considered the demand notice till 28th July, 1991 when the Hon'ble High Court was passed its orders.

9. The respondent-management in its written statement has raised two legal objection that the claimant worked with them as a Learner not as a workman upto 30th June, 1991 and the reference made this Court by the Court is not competent. In this respect it was argued that this question should have been raised before the Conciliation Officer as well as to the Government and moreover the respondent should have filed a civil writ petition against the present reference. The respondent in its evidence have not produced any such letter in form of exhibit which supports that the claimant was kept as a learner. In any industrial Act there is no category of Learner as mentioned by the respondent in its written statement and moreover there is no mention of any document which gives power to the respondent to employ anyone as a Learner to any period at a less fixed wages. Hence the claimant was working as workman and the worked upto 30th September, 1991 and fully entitled to legal benefits.

10. In second objection the respondent in its written statement, — vide para six as mentioned, that they have got certified standing orders but no particulars thereof revealed in the written statement. At the time of evidence in its defence the respondent has produced MW-1 who produced an

incomplete document as an Ext. MX/X, which is stated to be certified standing orders of the respondent factory. First objection about this document apparently comes in mind that every matter is typed but name of the employer although the name of the respondent does not come out from this name is written with ink and moreover the authentication letter does not bear the seal of the office of the certifying officer.

11. Even Ex. MX/X although not complete and authenticated document for accepting to be true however, sub-section 5 of section B as it appear at page no. 4 of the certified standing orders (not complete) being second part of the duly authenticated (not duly authenticated) certified standing orders serially marked page No. 11 speaks for Trade Apprentice. "Trade Apprentice which shall mean a workman under training \*\*\* may be extended. (To be read from the Ex. MX/X).

12. The definition of workman as defined under Sub-Clause (s) of Section 2 of the I. D. Act reads as below.

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act is in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

13. As per above definition even apprentice is a workman but the respondent taking wrong interpretation and kept the claimant in the category of Learner to deprive him from legal benefits. An Apprentice mean an apprentice under the Apprentices Act, 1961 which reads as below:-

Who is an Apprentice—Any person, including a graduate engineer or diploma holder, who is not less than 14 years of age and satisfies the prescribed standards of education and physical fitness, can undergo apprenticeship training in the designated trade under an employer. A designated trade means any trade or occupation or any subject field in engineering or technology or any vocational course, which the Central Government may notify after consultations with the Central Apprenticeship Council.

14. From the above definitions of workman and apprentice it is clear that the respondent is exploiting the workers including claimant workman. As per trade Apprentice as defined in the Apprentices Act, 1961 there must be a contract between the employer and the Apprentice in terms of definition as above mentioned. The respondent has not produced any such evidence nor the claimant was sent to the respondent through any Institution for completing his course and as such the workman claimant entered into service of the respondent factory as a workman and the workman claimed be accepted.

15. On the other hand the learned Authorised Representative for the management made submission that Manoj Kumar was working as Learner from 10th April, 1987 to 7th September, 1991 and he produced the E. S. I. Card as WW-1/1. He was not paid bonus leave wages and fund. On 2th September, 1991 he was stopped before lunch and before stopping he was asked to resign. On 19th August, 1991 he met with an accident for which he got ESI slip prepared and get treatment from ESI. He also used to go to his native place in a year for one month and 20 days but he was not getting salary for the said period. In cross-examination this witness deposed that for the first time when he came for joining duty he came straight from Bihar. He had no past experience so he was kept as learner. The management is giving the training to the new persons and this is not against any principle of law.

16. The workman further deposed in his statement that he served the demand notice but which is not signed by him, but subsequently he admits his signatures on the same. He admitted the signatures of all the documents Ex. MW-2 to MX/7. He admitted his own handwriting on the documents Ex. MX/7. He admitted his own handwriting on the documents Ex. MX-7 and MX-8. He admitted that documents Ex. MW-1/6 bears the signatures of one Sajjan Kumar and denied that the signatures of the Officer duly scribbled on MW 1/6 are forged one.

17. The second witness Anil Kumar deposed that on 7th September, 1991 he saw that Management dispensed with service of Sri Manoj Kumar and deposed that subsequent thereto what happened was not within his knowledge. He also deposed that there are no Standing Orders in the company and he has seen none. In cross-examination this witness deposed that he is a suspended employee and was suspended on 16th April, 1991 and enquiry is pending against him.

18. Anil Kumar also made the statement that he was authorised to give in writing to the workman permission slip to go out and the petitioner was working in Transformer Factory for slipping. He also deposed that Standing Orders are applicable but copy is not displayed. In cross-examination this

witness deposed that salary was prepared by Shri M.P. Yadav. He also admitted that on the documents the word '8' on the top is clear but under the signatures is not clear. He denied the signatures that he signed the documents on 17/6 and not on 17/8. He admitted that the document Ex. MW-1/6 does not bear the signatures of Shri M.P. Yadav or Shri G.S. Rathore. If the document is signed on 17/6, how the same can be used as on 17/8 is not clear. This shows of WW-3 with Shri Manoj Kumar is helping him out and out while adopting devious means.

19. Assuming for arguments sake and not admitting that applicant received certain injury in the month of September, 1991 as alleged by him. But there should have been some accident report having been sent to ESI Corporation and for that he should have been summoned accident report from ESI Corporation in order to corroborate his version which he as miserable failed to. The workman could have summoned ESI contribution card from the ESI Corporation. Had he worked during these months, his name must have been found in the said records for which quarterly return is submitted. Since the applicant was fully aware that he did not work beyond 30th June, 1991 to so he did not take the risk for summoning the records.

20. On the contrary management produced Shri M.P. Yadav who had brought the file of Standing Orders. There is a provision to engage trainee/trade apprentices in the Standing Orders for which the period of three years has been prescribed and said period is extendable keeping in view the exigencies. He produced Ex. MX-4 the document whereby his training period was extended upto 30th June, 1991. Ex. MX-5 is the letter extension of the period of training issued to the applicant. He produced the payment register in which the name of the applicant duly entered upto 30th June, 1991 and not subsequent period. In cross-examination he admitted that in the Transformer Factory 102 workers are working and only 19 are learners.

21. The tenure of the applicant is specified in the training letter Ex. MX-5 this clearly shows that he is to be imparted training upto 30th June, 1991 only and as such he is not a workman. The learned Authorised Representative for the management placed Reliance between the Sandeep Metal Craft (Private), Ltd., And Suresh D. Zandad and another, cited in 1991-II L.L.N. 523, holding that Industrial Employment (Standing Orders) Act, 1946—Apprentices Act, 1961—Model Standing Orders—Apprentice is defined under Model Standing Orders—It is nowhere required under Model Standing Orders that an operative who is appointed as an apprentice has to be an apprentice under Apprentices Act, 1961—No question of training of treating him as a workman would arise. It is further held that the question of retrenchment as expressed is also without any relevance. Here was a case where the concerned worker was being trained. If the company had refused to give him the probation order. It would have been perfectly within its right. The reference was also placed on between Tannery and Footwear Corporation of India, Ltd., And Labour Court-II, Kanpur and others, cited in 1991-II L.L.N. 488 holding that Apprentice under Act of 1961 would not become workman under S. 2 (s) of the I.D. Act. There is no conflict between Section 18 of Apprentices Act and Section 2 (s) of Industrial Disputes Act.

22. When the workman/applicant was working as learner and the Standing Orders provided that the respondent could employ any person as learner for three years and it is proved that he was working in the factory upto 30th June, 1991. The workman has not been able to prove that he worked upto 7th September, 1991. It means that he was not working beyond the period on probation and he could claim rights as workman in the factory otherwise he was learner. As the Standing Orders are placed on file and standing orders become facts, in force as rules and unless Standing Rules are proved to be illegal by the Court or the Government. Which is not done so in the present case. Then the documents signed by the workman on 17th June, 1991 and not on 17th August, 1991 and that is no signatures of M.P. Yadav and G.S. Rathore, and writing of documents shall visible shows that there is manipulation of said documents it makes that this document is doubtful in the eyes of law and cannot taken notice of it. If it is proved that the workman received injury in the month of September, 1991 and there should have been summoned report sent to ESI Corporation or he could summoned report from ESI to prove that he received injury but it was not done so. The workman had also not received pay of the month of July, August, 1991 and had he claimed for that months he must have made complaint to management or to Civil authorities.

23. It is given in the Standing Orders that the period of apprentice could be extended. As had been held in authority (supra) holding that apprentice is not a workman and if the management was workman he has no right to be the reference petition. Hence I decide this issue against the workman and in favour of the management.

**Issue No. 2 (Relief) :**

24. In view of my findings on the above issue I find that reference of the workman is not tenable and is rejected. The reference is answered and returned accordingly however, the parties are left to bear their own costs.

P. L. KHANDUJA,

The 15th November, 1994.

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. reference No. 1-94/2495, dated the 23rd November, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

No. 14/13/87-6Lab., 1015.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Drinks (P) Ltd., Asthal Bohar (Rohtak) *versus* Rameshwar.

IN THE COURT OF SHRI P. L. KHANDUJA PRESIDING OFFICER, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 381 of 1988.

*Between*

RAMESHWAR, SON OF SHRI RAM NARAIN, R/O KHERI SADH, DISTRICT ROHTAK,

*Workman*

*and*

THE MANAGEMENT OF M/S HARYANA DRINKS (P) LTD., ASTHAL BOHAR, DISTRICT  
ROHTAK.

*Present :*

Shri R. C. Siwach, Authorised Representative for the workman.

Shri M. Kaushal, Authorised Representative for the management.

#### AWARD

In exercise of the powers conferred by sub-clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/Roh. 125—88/36833—38, dated the 9th August, 1988:—

Whether the termination of services of Shri Rameshwar is justified and in order? If not, to what relief he is entitled?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he worked with the respondent industry from 1983 to 23rd October, 1987 continuously on the pay of Rs. 520 P. M. but the management retrenched him,—*vide* order, dated 25th November, 1986 without giving prior notice and illegally though he was taken back on the conciliation of Labour Department. The applicant had received the letter of the respondent, dated 5th March, 1988. He went to join the duty but the management did not allow him to join the duty. The workman had given a letter dated 21st March, 1988 to Labour Officer, Rohtak for giving him duty and Labour Officer advised him to give the demand notice. The applicant had also sent registered letter, dated 18th March, 1988 but the respondent refused to take him on duty hence this claim statement was filed that he be reinstated on the job with continuity of service and full back wages and the proceedings of the management be treated as illegal.

3. The written statement is filed by the respondent that respondent is a unit manufacturing soft drinks under the lease and licence of another company at Rohtak. The water supply at Rohtak is most erroneous one, the sub soil water is not fit for use of any soft drinks and only the water received through municipal committee or the canal water is used for manufacturing the soft drinks. The scarcity of water supply in this industrial belt is well known on account of non-availability of water during particular times and the manufacturing process is being suspended. The respondent have got their own testing laboratory in the factory. The applicant joined the services of company in the year, 1986 in the unskilled category. He was paid off and the factory was closed in the year, November, 1986 i. e. on 24th November, 1986. The applicant was offered the retrenchment compensation as per the provisions of the law alongwith notice but the applicant refused to receive the notice and amount of retrenchment compensation. Then notice was sent through registered A. D. cover and the amount was remitted through money order. The letter was received by the applicant but he refused to receive the money order. After closure of the factory, the factory was restarted in March, 1987. The applicant was given the offer of reemployment in March, 1987 alongwith other employees as per the provisions of Section 25-G & H of the Industrial Disputes Act, 1947. The respondent had closed down factory again in October, 1987 because of non-availability of water as per the order of Deputy Commissioner, Rohtak. All the employees were paid off. The applicant was given offer of re-employment as per his preferential right on 5th March, 1988 but the applicant did not report for duty inspite of the specific offer given to the applicant. The applicant filed a complaint, dated 18th March, 1988 before the Labour Inspector., Rohtak. Written reply was also filed by the respondent on 28th March, 1988. The applicant filed the demand notice dated, 22nd April, 1988 rather than reporting on duty. Again offer was given to the applicant as per law but the applicant did not accept the offer of re-employment. The respondent filed their written comments on 12th May, 1988 and without considering the merits of this case the appropriate Government made a reference in the matter. Hence prayer was made that the reference be answered in favour of the management and against the applicant holding that the reference is bad in law without jurisdiction and not tenable in the eyes of law. The management has no knowledge about any letter dated 20th April, 1987 written by the Deputy Labour Commissioner, Sonapat. The applicant never reported for duty after 24th November, 1988 as the factory was not running in shift. All the workers who reported for duty taken on duty as per the provision of Section 25-H of the Industrial Disputes Act but the applicant never accepted the offer of re employment and hence the reference petition be answered in favour of the respondent and against the applicant in toto.

4. The replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether the reference is bad in law ? OPR.
- (3) Whether the workman has been gainfully employed ? OPR.
- (4) Relief.

#### Issue No. 1 :

6. The workman has examined Shri Dharambir Singh, Clerk of Labour Officer, Rohtak as WW-1 who proved the copy of the application dated 18th March, 1988 which Ex. WW/1 and proceedings recorded thereon, the copy of which is WW-1/2. He also proved letter Ex. MX. Shri S. S. Budhwar has been also examined as WW-2. WW-3 is the workman himself. After tendering documents Ex. W-1 and W-2 evidence was closed. The management has examined S.S. Budhwar as MW-1 and Suraj Bhan, Assistant D. C., Rohtak as MW-2 and closed the evidence.

7. The workman has made statement that he received the letter EX. MS-1 of the management after closure of the factory in November, 1986 and he could not tell whether any money order was sent to him or not. The workman also made statement that he had not written any letter to the management. He also admitted that letter Ex. WW1/1 is written by him wherein he did not write that he is ready to join the work on new conditions. He also admitted that it is written in the letter Ex. WW1/1 that the management had refused him to do work. He also admitted that in 10/87 when 23 persons were removed and he was one of them. He also made statement that he has given the demand notice Ex. MS-2

8. For referring and discussing the statement of workman I will have to go through the documents placed on the file. Ex. MS-2 is demand notice filed by the workman before management that he had received letter of the management on 5th March, 1988 offering him to do services but he made complaint to Labour Officer, Rohtak on 21st March, 1988 that the management had refused to take him on the job. The workman has admitted in the demand notice that he had received letter dated 5th March, 1988 of the management, offering him the job in the factory and to join the duty.

9. Ex. WW 1/1 is letter written by the workman to Manager complaining that he was not given the notice regarding closure of the factory of the order of D. C. and no retrenchment compensation was given to him. He asserted that he should be employed on the job from the date when he was employed. It is admitted by the workman that factory was closed then there is no justification for the workman to assert that he should be taken on the job from date he was retrenched because the factory was closed its production and every workman was retrenched. It is the illegal and non justifiable demand of the workman as made in Ex. WW 2/1. Hence I do not find any force in contention of the learned Authorised Representative for the workman, that the applicant is liable to be reinstated from the date when he was retrenched from job.

10. The letter written by the management to Labour Inspector, Rohtak that workman was paid off on account of closure beyond control of the management as per order of the Deputy Commissioner, Rohtak on 23rd October, 1987. On the availability of water improved in March, 1988. The applicant was given the offer for re-employment as per Section 25-H of the Industrial Disputes Act. He was sent the notices and notice was sent by registered A. D. The applicant did not report for duty of his own.

11. Ex. W 1/1 is photocopy of the order passed by the District Magistrate, Rohtak prohibiting the manufacturing functioning of the management. The management was sent the letter. It is proved from the A. D. Ex-M2 and receipt Ex.-M3. Ex. M-6 is letter of written comments in respect of demand notice dated 22nd April, 1988 served by the workman addressed to Labour Conciliation Officer, Rohtak mentioning that how the factory was closed. Ex-M7 is the report sent by the Labour Officer, Rohtak mentioning that factory was closed twice for non-availability of proper water for a manufacturing of soft drinks and mentioning that the workman namely Rameshwar had not gone despite a calling by the management to come on the duty.

12. From the document so discussed above it is clear that factory was closed twice for non-availability of water for manufacturing of soft drinks. The learned Authorised Representative for the workman made submission that the workman had sent the letter to management,—vide registered post copy of which WW 1/1 and it was not informed to workman to join the duty as letter,—vide Ex. MX and hence no complaint was tenable. The learned Authorised Representative for the workman also made the submission that the workman was never offered,—vide letter Ex. M-6 and these letters have been prepared ficticiously. This is only arguments and based on surmises and not based on proved facts that the management had never sent any letter to the workman,—vide Ex.M-6 letter,—vide Ex. MX. The workman was informed by the management time and again to come and join the duty but the workman did not intentionally come. It is proved that the workman is not entil entitled to the job as claimed.

13. The only contention made by the learned Authorised Representative for the workman regarding the statement of S. S. Budhwar. S. S. Budhwar made statement that the name of the workman is entered in the month of October, 1987 in the record but name of the workman is not coming into record in the month of March, 1988. I fail to understand as to what learned Authorised Representative for the workman wanted to derive from this point of the statement. If the name of the workman is entered in the month of October, 1987, it is proved to be wrong from the letters Ex. MX, photo copy of the order Ex. MW-1/1 and Ex. MS-1 and notice Ex. M-1 and the Ex. M-4 to the effect when District Magistrate has ordered closed of the factory on 27th October, 1987, it could not have worked on the date on 27th October, 1987 then how the workman could have work in the month of October, 1987. Even if it is admitted that he had worked in the month of October, and he might have been worked upto 27th Octocer, 1987 but it does not effect the merits of the case.

14. I have come to the conclusion that the workman who was not attending duty and he has no right to file the reference petition and I decide this issue against the workman and in favour of the management.

#### Issues No. 2 and 3 :

15. Both these issues are not pressed or argued hence I decide both these issues against the management.

#### Issue No. 4 (Relief) :

16. In view of my findings on the above issues I reject the reference petition and demand notice filed by the workman against the management. The reference is answered and returned accordingly, however the parties are left to bear their own costs.

The 23rd November, 1994.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. 2512, dated 1st 23rd November, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

The 16th December, 1994

No. 14/13/87-6Lab./1016.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Partap Steel Rolling Mills Ltd Ballabgarh *versus* Ved Ram :—

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,  
FARIDABAD

Reference No. 132/87

THE MANAGEMENT OF M/S PARTAP STEEL ROLLING MILLS LTD :  
21/3 MATHURA ROAD, BALLABGARH (FARIDABAD)

*versus*

THE WORKMAN NAMELY SHRI VED RAM, C/O SHRI R. P. SINGH, 652,  
THERMAL COLONY, SECTOR-22, FARIDABAD

*Present :*

Sh. G. S. Choudhary, Authorised Representative for the workman.

Sh. K. P. Aggarwal, Authorised Representative for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of Sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endorsement No. 9573-78, dated 3rd March, 1987:—

Whether the services of Ved Ram have been terminated or he has lost his lien on the job by remaining absent of his own? To what relief is he entitled as result thereof?

2. Briefly stated the case of the workman is that he was employed by the management as Tongsman on 6th November, 1978. His work and conduct had been satisfactory. However, he was an active member of C.I.T.U. and a general demand notice was served by the union. The management felt annoyed and on 9th November, 1985 he was stopped at the gate of the factory. His request to allow him to resume duty was declined on a false plea that he had been absent from duty. He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement *inter alia* taking a plea that the reference is bad in law as the Government of Haryana had firstly rejected the demand notice of the petitioner on 8th May, 1986 and then made reference to the court without giving an opportunity of hearing to the management. The management further stated that the workman had been absent from duty with effect from 9th November, 1985 without any authorisation and so his name was legally dropped from the muster rolls with effect from 18th November, 1985 in accordance with Section 17-C of the Certified Standings Orders.

4. In the replication the workman stated that the Government of Haryana had fixed the date of hearing the parties on 16th January, 1987 at 2 p.m. before the Joint Labour Commissioner, Haryana but the management had deliberately failed to appear and so the dispute was referred after hearing the workman.



5. On the pleadings of the parties, the following issues were framed :-

- (1) Whether reference is bad as alleged ?
- (2) Whether reference is vague and indefinite as alleged and if so to what effect ?
- (3) Whether respondent has not been properly described and if so to what effect ?
- (4) As per terms of reference.

6. Both the parties led evidence.

7. After hearing both the parties, Smt. Nirmal Yadav, the then, Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon,--vide award dated 1st January, 1992 decided all the issues against the management and in favour of the workman and held that the termination of services of the workman was against the principles of natural justice and also in violation of the Certified Standings Orders of the company. In conclusion she set aside the impugned order and passed the order of the reinstatement of workman with continuity in service and full back wages with no orders as to costs.

8. The management filed written petition No. 7806 of 1992 before the Hon'ble High Court of Punjab & Haryana challenging impugned award and a division bench of Hon'ble High Court passed order dated 2nd April, 1993 in following terms :-

"In view of the judgement of the Division Bench in 1983 (P & H) (1) ILR 494, we set aside the award of the Labour Court and direct the Labour Court to give a specific finding as to whether or not a hearing was granted to the petitioners before the reference was made and on the finding returned the effect thereof in the circumstances of the case. The parties are directed to appear before the Labour Court on 10th May, 1993"

9. Notices were sent to both the parties and they have appeared and have adduced evidence.

10. I have heard the authorised representatives of both the sides. My findings on Issue No. 1 after examining the matter as per order of the Hon'ble High Court dated 2nd April, 1993 referred to above are as under :

11. Two witnesses have been examined on behalf of the management. MW 2 Manjit Singh clerk, office of Labour Commissioner, Haryana, Chandigarh, deposed that the summoned record was weeded out on 2nd December, 1991 under the orders of Labour Commissioner. In cross-examination he deposed that letter dated 7th January, 1987 Ex. PX was issued under the signatures of K. K. Bhargava, Head Assistant on behalf of the Dharamender Nath, Joint Labour Commissioner. MW 3 Mahinder Singh Yadav, Deputy Manager (P) deposed that the management had not received any notice from the Labour Commissioner after the rejection of first demand notice by the Government. He further stated that the management was not given opportunity of hearing at the time of reconsideration of the demand notice.

12. On the other hand, Ved Ram, the workman, stated in his statement recorded on 1st February, 1989 that a date had been fixed at Chandigarh with regard to his demand notice and he had appeared but none had appeared on behalf of the company. MW 2 Manjit Singh, clerk of Labour Commissioner, Haryana Chandigarh (on recall by the workman) deposed that he had brought the despatch register for the year 1987 and as per entry made in this register letter dated 7th January, 1987 Ex. PX was issued to the workman as well as to M/s Partap Steel Rolling Mills, Ballabgarh. He further stated that the aforesaid letter was shown to have been despatched to M/s Partap Steel Rolling Mills, Ballabgarh through despatch No. 594, dated 7th January, 1987. In cross examination he stated that it was not mentioned on the letter dated 7th January, 1987 as to whether it was sent to both the parties under ordinary post or under registered cover because the record with regard to the affixation of postal stamps on the letter was maintained in another register.

13. Keeping in view the aforesaid position it was considered necessary to summon the stamps register maintained in the office of Labour Commissioner, Haryana, Chandigarh with regard to the postal stamps affixed on the letter despatch through post and as such an order was passed to that effect.

14. Sh. J. P. Shrivastava, Assistant of the office of the Labour Commissioner produced the relevant stamps register and he was examined as court witness. He deposed that there was no entry in the stamps register with regard to the despatch of letter No. 594 dated 7th January, 1987 to M/s Partap Steel Rolling Mills, Ballabgarh.

15. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved from the statement of CW-1 J. P. Shrivastva that letter dated 7th January, 1987 was not sent by the Labour Commissioner, Haryana, Chandigarh to the management during the period from 7th January, 1987 to 16th January, 1987. This position also finds support from the testimony of MW-3 Mahinder Singh Yadav that no notice was received by the management from the office of Labour Commissioner, Haryana, Chandigarh for hearing regarding the demand notice of the workman after its rejection on 8th May, 1986 through letter Ex. M-7. Thus it stands proved that the no hearing was granted to the management before making the reference after its rejection. Consequently, the reference is bad in law in view of the judgement of division bench of our own Hon'ble High Court reported as *M/s Escorts Ltd versus Industrial Tribunal, Haryana, Faridabdd and other* 1983 LAB I.C. 223.

16. On the other hand, it has been submitted on behalf of the workman that the management was directed by the Joint Labour Commissioner, Haryana,—vide letter, dated 7th January, 1987 Ex. PX to appear on 16th January, 1987 for reconsideration of the matter but none had appeared as stated by the workman on oath. The workman had appeared and submitted affidavit dated 5th February, 1987 Ex. W-6. After hearing the workman, the Government had made the present reference,—vide letter dated 3rd March, 1987. With regard to the statement of J. P. Shrivastva it has been submitted that register produced by him was not maintained properly in the regular course of business as the names of certain parties whom the letter were sent were not either indicated or were not properly indicated. It was clearly mentioned in the despatch register produced by MW-3 Manjit Singh the aforesaid letter dated 7th January, 1987 was despatched to the management,—vide despatche No. 594. It is thus, clearly established that the management had not availed of the opportunity of hearing given to them before making the reference after its rejection. Consequently, it has to be taken that the management was given an opportunity of hearing and the reference is not bad in law.

17. It is not disputed that the Government record with regard to the making of reference in this case has been worked out. The management had taken plea at the earliest in the written statement that opportunity of hearing was not given to them before making the reference after rejection of the demand notice. It is also clear from the evidence discussed above that the office of the Labour Commissioner was maintaining two separate registers one despatch register and other the stamps register. In the absence of entry in the stamps register with regard to actual posting of letter dated 7th January, 1987 Ex. PX, it can not be concluded on the basis of entries in the despatch register that was not sent to the management. Moreover MW-3 Mahinder Singh Yadav, categorically stated that they had not received any notice from the office of the Labour Commissioner for hearing after the rejection of the demand notice. On the other hand, none of the witnesses examined on behalf of the workman deposed that the letter dated 7th January, 1987 Ex. PX was actually sent to the management or it was received by them. Keeping in view all the facts and circumstance it is concluded that it stands proved that the management was not granted an opportunity of hearing before making the reference after its rejection. In view of this position it is held that the reference made by the Government is bad in law as per decision of our own Hon'ble High Court in the case of *Escorts Ltd. Faridabad versus Presiding Officer, Industrial Tribunal, Haryana, Faridabad and others* 1983 LAB IC 223. Issue No. 1 is decided in favour of the management and against the workman.

18. In view of my findings on Issue No.1 above, it is held that the reference made by the Government is bad in law as such the workman is not entitled to any relief. The award is passed accordingly.

The 28th November, 1994.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

Endorsement No. 3274, dated the 28th November, 1994

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government of Haryana Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.